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IN THE

Supreme Court of the United States

October Term, 1963

No. 513

RAYMOND D. BROWN,

Petitioner,

against

DREW CHEMICAL CORPORATION
(formerly E. F. Drew & Co., Inc.),

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Raymond D. Brown,
Petitioner, Pro Se,
P. O. Box 236,
Boonton, New Jersey.

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No.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner, Raymond D. Brown, appearing *pro se*, is an unemployed laborer, and a citizen of the United States who respectfully prays that a Writ of Certiorari be issued from and under the seal of this Court, to review the decree of the Supreme Court of New Jersey, rendered on July 1, 1963 denying Certification to the Appellate Division of the Superior Court, and thus affirming the Opinions of that Court and the Law Division of the Superior Court, denying the Petitioner's Counter-Motions.

As a measure of economy, the Record on Appeal submitted to this Court consists of the Petition for Certification and Appendix, Brief in Opposition, and Reply Brief used by the parties in the Supreme Court of New Jersey. Appended hereto is all matter which is not included in said Records.

Opinions Below

The judgment of the Law Division of the Superior Court, rendered on November 9, 1962 is on page 21a of the Appendix to the Petition used below, and its supporting Order is on page 2a of the Brief in Opposition.

While the case was pending in the Appellate Division of the Superior Court, the Petitioner attempted to effect a transfer of action to speed its progress. This Petition is reproduced on page 1a and the Order of Denial is on page 3a. Therefore, the Appeal remained in the Appellate Court.

The affirming Opinion of the Appellate Division of the Superior Court, rendered on May 13, 1963, is on page 45a of the same Appendix; with its supporting Mandate on page 4a of the Appendix herein.

The Order of the Supreme Court of New Jersey, entered on July 1, 1963 denying Certification, is appended hereto on page 6a. It is from this Order that this Petition has been brought before this Court.

Jurisdiction

The Supreme Court of New Jersey is the highest tribunal of that State in which a decision for the matter involved herein could be had. Thus, 28 U. S. C. A. Sec. 2101 (c) has been complied with.

Jurisdiction to review this case upon Writ of Certiorari is conferred upon this Court by 28 U. S. C. A. Sec. 1257(3). Also, an authority has provided that where a right is claimed in a state court arising under a statute of the United States, a question is presented reviewable by the Supreme Court of the United States. *Supreme Lodge, etc. v. Knight of Pythias of North America, etc.*, 1912, 59 So. 88, 102 Miss. 280.

This application presents the federal question whether or not the State of New Jersey, upon enacting the Law Against Discrimination, i.e. N. J. S. A. 18:25-1 (" " " in Employment, N. J. S. A. 18:25-12, *et seq.*), can constitutionally deny the guarantee of due process of law to those complainants seeking redress of grievances pursuant to that statute.

Questions Presented for Review

(1) Although the Complaint (R. App. to Pet. p. 1a) is somewhat weak on proper legal terminology, does this Court find that it contains no allegation nor reasonable inference that the Respondent (Defendant) had breached an agreement with the Petitioner (Plaintiff)?

(2) Does the State of New Jersey have a Federal right to deny any citizen the right to bring Civil Action in a court of law or equity as a breach of its prescribed remedy?

(3) Does the State of New Jersey have a Federal right to authorize an administrative agency to function as a Trial Court, when that agency by State law, is "" " " not bound by the strict rules of evidence prevailing in courts of law or equity"?

(4) In this proceeding as in those below, the Petitioner has been unable to prove that the Respondent's discriminatory policy could be attributed to any of those reasons specifically forbidden by the statute N. J. S. A. 18:25-12(a) i.e., "" " " race, creed, color, national origin, ancestry, or age " " "".

Therefore, does this Court find that in all such cases the Law Against Discrimination, N. J. S. A. 18:25-1, *et seq.* shall be deemed null and void?

(5) The theory behind the following question presents a *new argument* which is mainly intended to apply in the event that this Court takes an affirmative stand to the 4th question. However, it may be taken to co-exist with the

original argument. Since for economic reasons it was mandatory that the Petitioner be gainfully employed, in the absence of the applicability of N. J. S. A. 18:25-1, in an employment case such as here, where the employee was forced to labor against his will by the threat of dismissal, would not his action be supported by U. S. C. A. Amend. XIII Sec. I, which abolished involuntary servitude?

Statement of the Case

On September 4, 1962 the Petitioner filed a Civil Action Complaint (R. App. to Pet., p. 1a) against the Respondent in the Law Division of the Superior Court. It pled that on April 13, 1955 he had been hired as a "Sample Filler" at an hourly wage of $1.50. And that even after 3 merit raises of 5¢ each, he was being discriminated against by being required, under the threat of dismissal, to work contrary to the title under which the position had been accepted—without further wage increments.

Subsequent pleas established the fact that after several futile attempts with the Personnel Department to have his pay adjusted, that the Petitioner threatened civil action in a letter to the company, who replied that it was their desire to be fair with all employees, and informed him that the Personnel Manager would review the Petitioner's employment status. Whereupon, said person discharged the Petitioner for having threatened to file the Complaint.

To the foregoing, the Petitioner stated that the Respondent's actions were in violation of the Law Against Discrimination in Employment, N. J. S. A. 18:25-12 Sec. (a) and (d), which provide:

> "It shall be an unlawful employment practice, or as the case may be, an unlawful discrimination:
>
> (a) For an employer, because of the race, creed, color, national origin, ancestry, or age of any individual, or because of the liability for

service in the Armed Forces of the United States, of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual *in compensation or in terms,** conditions or privileges of employment, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces.

. . . . . .

(d) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this act[1] or because he has *filed a complaint,** testified or assisted in any proceeding under this act."

---

* (emphasis added)

[1] Sections 18:25-1 to 18:25-28.

Finally the Petitioner claimed arrearages in the amount of $3,870.13 due from April 13, 1956 to May 8, 1962. And further claimed a loss of $18.48 per working day (5 per week), until termination of suit. This claim was later amended pursuant to a Union agreement (R. App. to Pet., p. 44a) to recover a loss of $18.88 per working day from December 18, 1962, until termination of suit.

On November 9, 1962 the Respondent moved *without answering*, that the Complaint had failed to state a cause of action upon which relief could be granted (R. App. to Pet., p. 8a). This argument was brought on a 3-point basis, which was maintained throughout the Courts below and is as follows:

"(1) The Complaint fails to allege a breach of contract or breach of agreement by the Defendant.

(2) The Complaint fails to allege any violation of the Law Against Discrimination, N. J. S. A. 18:25-1 et seq.

(3) The Plaintiff has failed to exhaust his administrative remedies and therefore has no standing before the Courts." (R. App. to Pet., pp. 8a-11a; pp. 46a-13; pp. 28a-11; pp. 29a-20; pp. 33a-1; R. Brief in Opp., pp. 3-19.)

Rule 23(f) of this Court provides that reference be made to the stage in the proceedings in the court of first instance and the appellate court at which the federal question was raised. However, because of the Petitioner's layman status, probably the best reference to compliance with this rule in the Trial Court, can be found where he has indicated that he was aware that an administrative hearing would jeopardize the strength of his argument (R. App. to Pet., pp. 15a-15-22; pp. 20a-28-37). These allegations easily infer the federal argument that the administrative procedure lacks the guarantee of due process of law. But in the appellate courts the federal question was raised in a more direct manner. See R. App. to Pet., pp. 24a-26a-10-22.

Argument and Authorities

As an initial defense, the Petitioner urges that his lack of experience with proper legal terminology somewhat necessitates reliance upon the well-established doctrine of liberality of pleading, and the requirement that all reasonable inferences be considered most favorable to the pleader, *Jer. in City* v. *Hague*, 18 N.J. 584 (1955). Thus, by an examination of the Complaint, the Court will find it a simple matter to determine that since the Petitioner had been hired to work as a "Sample Filler" but forced, under the threat of dismissal, to labor contrary to that arrangement without equal compensation, that the Respondent was guilty of a *swindle by breach of agreement*, regardless of whether any prior agreement existed to pay the Petitioner more than he was in fact paid. Here, it is essential for the Court to note that the title given to the

position and the actual working conditions encountered are two entirely different matters. Also, in rebuttal of the Respondent's contention that the Petitioner's action failed to allege a breach of contract, in this case as in the majority of employment relationships involving the proletariat, the employee was merely given the position, and no contract existed.

Therefore, it is obvious that the Respondent's actions were contrary to N. J. S. A. 18:25-12(a), which forbids discrimination against individuals "* * * in compensation or in terms * * *."

The Respondent's denial of any infringement upon the Petitioner's rights also included the contention that the mere *threat* to file a Complaint did not constitute an offense under N. J. S. A. 18:25-12 (d) which forbids that an employer "* * * discharge * * * any person * * * because he has filed a Complaint * * *." In brief terms, the Petitioner has previously argued that since the Respondent was given formal notice of the impending civil action, that the provision in the statute, *supra*, should apply regardless of whether the Complaint had actually been filed. But privately he (Petitioner) agreed that dismissal is proper when *court action* is brought. See R Pet. Point Three, pp. 5, 6.

To the sufficiency of the Respondent's allegation that the Petitioner must exhaust his administrative remedies, since the Commissioner of the State Board of Education had been given jurisdiction in matters involving discrimination, it is hereby acknowledged that due process of law may be afforded administratively as well as judicially, since lawful administrative process is due process equally as much as lawful judicial process; *Nulter* v. *State Road Commission of West Virginia*, 1937, 193 S. E. 549, 119 W. Va. 312.

However, the doctrine of exhaustion of administrative remedies admits exception in application when matters

involving public interest necessitating prompt resolution are involved, *Durgin* v. *Brown* 37 N. J. 189 (1962), or where the question involved is solely an issue of law or statutory construction, as in *Deaney* v. *Linen Thread Co.*, 19 N. J. 578 (1955). Therefore, with respect to *Nulter* v. *State Road Commission*, *supra*, its theory is applicable only where it does not infringe upon the Petitioner's federally created rights which guarantee due process of law.

At this point it is necessary for the Court to give consideration to N. J. S. A. 18:25-16 which provides *inter alia:*

> "* * * the Commissioner shall not be bound by the strict rules of evidence prevailing in courts of law or equity."

Even to the Petitioner's layman status, this clause in the remedial provisions reveals that while creating the Law Against Discrimination the State provided a means to suppress the evidence of any complaint by restricting his action to arbitrary or quasi-judicial review, wherein he lacks the guarantee of due process of law. U. S. C. A. Amend. XIV Sec. 1, page 383 provides *inter alia:*

> "* * * nor shall any State deprive any person of life, liberty, or property without due process of law."

It has been stated that where the purpose of the statute is a legitimate function of government, *and the measures invoked are wholly reasonable and appropriate to such purpose, there is no invasion of the constitutional guarantee of due process of law* *. *Singer Sewing Mach. Co.* v. *New Jersey Unemployment Compensation Commission*, 1942, 27 A. 2d 889, 128 N. J. L. 611, affirmed 31 A. 2d 818, 130 N. J. L. 173. Therefore, it is clearly evident that in order for every citizen to be afforded the *guarantee* of due process of law, that his *initial* hearing must be held before a body where the strict rules of evidence apply as they do in a trial court—even though that body has only administrative powers.

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* Emphasis added.

Indeed, the State itself dutifully sensed the need to permit complaints to bring independent action when, in N. J. S. A. 18:25-27 it declared:

> "The provisions of this act shall be construed fairly and justly with due regard to the interests of all parties. Nothing contained in this act shall be deemed to repeal any of the provisions of the Civil Rights Law or any other law of this state relating to discrimination because of race, creed, color, national origin or ancestry or liability for service in the Armed forces of the United States; except that, as to practices and acts declared unlawful by section eleven of this Act*, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. *Nothing herein contained shall bar, exclude, or otherwise affect any right or action, civil or criminal, which may exist independently of any right to redress against or specific relief from an unlawful employment practice or unlawful discrimination.*" **

* N. J. S. A. 18:25-12.

** Emphasis added.

From the emphasized portion of the provision *supra*, this Court should readily be able to grasp that although the State prescribed the administrative remedy, it did not transgress upon the Petitioner's independent right to seek redress before the Trial Courts, and that the Respondent's argument in rebuttal of this (R. App. to Pet., pp. 17a-18a, 25-10) is merely superficial for the purpose of providing a contest.

Pertinent to the 5th question, the purpose of this *new argument* is to supplement the Petitioner's defense in the unlikely event that this Court finds the Law Against Discrimination null and void in cases, such as here, where the Plaintiff is unable to bring any allegation that the Defendant discriminated for any of those reasons expressly for-

bidden therein *i.e.*, " * * * race, creed, color, national origin, ancestry, or age * * *."

It has previously been disclosed that the Petitioner was required against his will, to labor for less than equal wages or face dismissal. Therefore it is his contention that these tactics submitted him to involuntary servitude, in violation of U. S. C. A. Amend. XIII Sec. 1, p. 269 which states:

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Embodying this Amendment, an authority has stated that "involuntary servitude" as used in this Amendment means the condition of one who is compelled by force, coercion, or imprisonment, and against his will to labor for another whether he is paid or not. *Crews* v. *Lundquist*, 1935 197 N. E. 768, 361 Ill. 193.

Conclusion

From the foregoing facts, it may be readily determined that the entire action herein amounts to the simple conclusion that under the law, the Petitioner should not have been required to labor for inequal wages or face dismissal, regardless of the absence of a contract. And that as a complainant, he was entitled to due process of law as guaranteed by the Federal Constitution. Therefore, the questions presented in this original case are important and basic to Civil Rights, particularly in the field of employment. And I respectfully suggest that a decision by this Court on these questions is urgently needed by all employees so that they may have full benefit of the Law Against Discrimination, and/or be protected against involuntary servitude.

For these reasons, Petitioner prays for the issuance of a Writ of Certiorari to review the judgment of the Supreme

Court of New Jersey, and upon such review, reverse such judgment and grant the Petitioner's Counter-Motions thereby permitting him to move for compensatory damages, interest if any, costs, and reinstatement with the Respondent.

Respectfully submitted,

/s/ RAYMOND D. BROWN,
Petitioner, Pro Se.

Dated: September 20, 1963.

APPENDIX

Petition for Transfer of Pending Action

SUPREME COURT OF NEW JERSEY

Docket No. 4067

RAYMOND D. BROWN,

Plaintiff-Appellant,

v.

DREW CHEMICAL CORPORATION,
(formerly E. F. Drew & Co., Inc.),

Defendant-Respondent.

Sirs:

Rule 1:10-1(a) provides:

> "Certification shall be allowed where the Court of its own motion, certifies a cause or class of causes for appeal."

Author's notes provide *inter alia*:

> "* * * Subparagraph (a) of this rule permits the Supreme Court to certify any case directly to it for determination. The Supreme Court has exercised this right even after an appeal has been taken to the Appellate Division of the Superior Court * * * It should be noted that under Rule 1:10-4(c), certification must be granted if it is sought to review a judgment or order of the Appellate Division when the petitioner is entitled to an appeal as of right * * *."

Petition for Transfer of Pending Action

THEREFORE, the above-named plaintiff-appellant respectfully petitions that this Court certify to it the above entitled action, which is pending in the Appellate Division of the Superior Court under Docket No. A-213-62. This petition is urged on the grounds that due to the originality, statutorial importance, and urgency of the matter, it should be determined by the Supreme Court.

Respectfully submitted,

/s/ RAYMOND D. BROWN,
Plaintiff-Appellant.

Dated: March 1, 1963.

A 30

Order Denying Certification

SUPREME COURT OF NEW JERSEY

Docket No. 4067

On Motion for Certification

Raymond D. Brown,

Plaintiff-Appellant,

v.

Drew Chemical Corporation,

Defendant-Respondent.

This matter having been duly presented to the Court, it is Ordered that the motion for certification is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this twenty-fifth day of March 1963.

/s/ John H. Gildea,
Clerk.

Mandate on Affirmance

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Appeal Docket No. A-213-62

RAYMOND D. BROWN,
Plaintiff-Appellant,

v.

DREW CHEMICAL CORPORATION,
(formerly E. F. Drew & Co., Inc.),
Defendant-Respondent.

This cause having been duly argued before this Court by Raymond D. Brown, appellant pro se, and James T. Clare, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court, Law Division, is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless a Notice of Appeal to the Supreme Court or a Notice of Petition for Certification has been filed or is pending, or unless otherwise ordered by this Court and that the record be remitted to the Superior Court, Law Division, to be there proceeded with in accordance with the rules and practice relating to that Court, consistent with the opinion of this Court.

Mandate on Affirmance

WITNESS the Senior Judge of the Part, Superior Court of New Jersey, Appellate Division, at Trenton on the 13th day of May, 1963.

Clerk of the Superior Court.
I. GRANT SCOTT,

I hereby certify that the foregoing is a true copy of the original on file in my office.

I. GRANT SCOTT,
Clerk.

Order Denying Petition

SUPREME COURT OF NEW JERSEY

Docket No. 4150

RAYMOND D. BROWN,

Plaintiff-Petitioner,

v.

DREW CHEMICAL CORP.,

Defendant-Respondent.

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the first day of July, 1963.

MORTIMER G. NEWMAN, JR.,
Clerk of the Supreme Court.

Filed:
July 1, 1963
John H. Gilden,
Clerk.

A true copy

John H. Gilden
Clerk

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vs.

DREW CHEMICAL CORPORATION
(formerly E. F. Drew & Co., Inc.),

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOHN J. MONIGAN, JR.,
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JAMES T. CLARK,
Of the New Jersey Bar,
On the Brief.

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IN THE

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No. 513

RAYMOND D. BROWN,

Petitioner,

vs.

DREW CHEMICAL CORPORATION
(formerly E. F. DREW & CO., INC.),

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Federal Constitutional Amendments and State Statutes Involved.

U. S. Const. amend. XIII—Slavery Abolished

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation."

New Jersey Law Against Discrimination, L. 1945, c. 169, p. 595, §15, N. J. S. A. 18:25-16.

"Practice and procedure.

The case in support of the complaint shall be presented before the commissioner by the attorney for the

division and evidence concerning attempted conciliation shall not be received. The respondent may file a written verified answer to the complaint and appear at such hearing in person or representative, with or without counsel, and submit testimony. In the discretion of the commissioner, the complainant may be allowed to intervene and present testimony in person or by counsel. The commissioner or the complainant shall have the power reasonably and fairly to amend the complaint, and the respondent shall have like power to amend his answer. The commissioner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed."

Questions Presented.

I. SHOULD THIS COURT EXERCISE ITS DISCRETION IN FAVOR OF THE ISSUANCE OF A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, TO REVIEW A FINAL DETERMINATION OF THAT COURT WHERE THE JUDGMENT ENTERED BELOW WAS IN ACCORDANCE WITH WELL SETTLED FEDERAL CONSTITUTIONAL PRINCIPLES AND WAS BASED UPON STATE LAW, WHICH, WITHOUT REFERENCE TO A FEDERAL QUESTION, WAS SUFFICIENT TO SUPPORT THE ENTRY OF JUDGMENT?

II. SHOULD THIS COURT CONSIDER A FEDERAL QUESTION RAISED FOR THE FIRST TIME ON A PETITION TO IT FOR A WRIT OF CERTIORARI WHERE THE QUESTION URGED IS NOT CONNECTED WITH OR AN ENLARGEMENT OF THE FEDERAL QUESTION RAISED IN THE NEW JERSEY COURTS?

III. DO THE ALLEGATIONS OF THE COMPLAINT ASSERTING A VIOLATION OF THE THIRTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION RAISE A SUBSTANTIAL FEDERAL QUESTION WHICH SHOULD BE CONSIDERED BY THIS COURT?

Counterstatement of the Case.

Although the Petitioner's Statement of the Case sets forth a general synopsis of the state of the record of this action as it has progressed through the courts of the State of New Jersey, it contains certain inaccuracies and omissions, the correction and inclusion of which the Respondent considers necessary for a complete determination on this application for a writ of certiorari. Accordingly, the following Counterstatement of the Case is submitted pursuant to the provisions of *Rule 40(3)*. Inasmuch as the record below has been submitted to this Court by the Petitioner in the form of appendices, the Respondent, in order to comply as closely as possible to *Rule 40(2)*, shall make all references to the Petitioner's appendix below as *Pa(1)*, while references to the Petitioner's appendix to the pending petition shall be designated as *Pa(2)*. References to Respondent's appendix below will be designated as *Ra*.

The Petitioner herein originally commenced his action in the Superior Court of New Jersey, Law Division, Morris County on September 4, 1962, to recover damages in the nature of unpaid wages which he claimed were due to him from his employer, the Respondent, from April 13, 1955, the date of his hiring, until May 8, 1962, the date upon which the Respondent terminated his employment. He also sought damages for his alleged wrongful dismissal by the Respondent.

In his verified complaint, he alleged that he was hired by the Respondent on April 13, 1955, to perform the duties of a position which was designated by the Respondent as a "Sample Filler" (P1a(1)). It was further alleged that shortly after entering into the position for which he was hired, the Petitioner became "aware" that the Respondent had "mis-classified" (sic) his position (P1a(1)), this

awareness presumably being predicated upon the fact that some of his duties as a "Sample Filler" were also required duties in positions to which the Respondent had assigned a higher job classification and a corresponding higher rate of compensation (P1a(1)). The complaint asserted that because of the apparent overlapping of some of these duties, the Petitioner was entitled to compensation, not at the wage rate offered to and accepted by him at the time of his hiring, but at a higher rate of pay which corresponded to a position, the execution of the duties of which he was not hired to perform (P1a(1)). The Respondent's refusal to agree to Petitioner's demands for payment of the higher wage rate was alleged to have been discriminatory and in violation of the New Jersey *Law Against Discrimination, L. 1945, c. 169, p. 589, §1, N. J. S. A. 18:25-1 et seq.* (P2a(1)), notwithstanding the fact that in the complaint itself the Petitioner's entitlement to the increment was asserted merely "as a matter of principle" (P2a(1)).

In addition to the foregoing, the Petitioner claimed that he was dismissed from his employment as a result of his threat to file a civil action against the Respondent if his demands for increased wages were not met, (P3a(2)). It was contended that this dismissal was wrongful and constituted a violation of *N. J. S. A. 18:25-12(d)*. It was not asserted in the complaint, nor was it asserted at any time prior to the petition now pending, that the Petitioner's rights under the Thirteenth Amendment to the Federal Constitution, *U. S. Const. Amend. XIII, §1*, had been violated. Similarly, the record below is devoid of the suggestion now made by the Petitioner that he was required under "threat of dismissal" to work for the Respondent (Pet. 4). This allegation is here raised for the first time.

Subsequent to the filing of the complaint, and before filing an answering pleading, the Respondent moved under

the provisions of the New Jersey Procedural Rule *R. R. 4:12-3* for dismissal of the complaint and for the entry of judgment in its favor on the grounds that the Petitioner had failed to state a claim for which relief could be granted. In support of its motion, the Respondent asserted that the allegations contained in the complaint did not disclose any violation of the New Jersey *Law Against Discrimination, supra*, did not state a cause of action for breach of contract, and, further, assuming the sufficiency of the allegations, that the Petitioner had failed to exhaust the administrative remedies provided for in the Act itself. The trial court entered judgment in favor of the Respondent (R2a) and on November 29, 1962, the Petitioner filed an appeal of the trial court's Order of Judgment with the Superior Court of New Jersey, Appellate Division (P23a(1)).

Pending argument in the Appellate Division, the Petitioner filed an application in the Supreme Court of New Jersey for a writ of certification. This petition was denied without formal opinion on March 25, 1963 (R3a). Thereafter, the Appellate Division, in an unreported written opinion dated May 13, 1963, affirmed the trial court's dismissal of the action and held that as a matter of state law the Petitioner had failed to set forth a cause of action for breach of contract (P46a(1)). In addition, it construed the language of the *Law Against Discrimination* and concluded that the Petitioner's complaint failed to set forth any facts which, even if accepted as true, constituted a violation of the express provisions of that statute (P46a, 47a(1)). It further concluded that even if it was assumed that the Petitioner adequately alleged one or more violations of the Act, he had failed to exhaust the administrative remedies specifically provided for therein (P47a(1)).

After the Appellate Division's determination, the Petitioner again applied to the Supreme Court of New Jersey for a writ of certification, and by virtue of the entry of an order on July 1, 1963, this second application was denied, also without opinion (P6a(2)). This case is presently before this Court on the Petitioner's application for a writ of certiorari to the Supreme Court of New Jersey.

ARGUMENT.

POINT ONE.

The petition does not present a substantial federal question which would support the exercise of the Court's discretion in favor of issuing a writ of certiorari to the Superior Court of New Jersey, Appellate Division.

A.

A provision in a state statute dispensing with a strict application of the rules of evidence in administrative proceedings brought thereunder does not violate the due process clause of the Fourteenth Amendment to the United States Constitution.

As the Respondent views the record, the writ here sought by the Petitioner would, if granted, be more appropriately directed to the Superior Court of New Jersey, Appellate Division, rather than to the Supreme Court of New Jersey, since the latter court, in accordance with its rules of procedure, has exercised its discretion against a review of the decision of the Appellate Division. *28 U. S. C. 1257; Chicago & E. I. R. Co. v. Industrial Commission of Illinois*, 284 U. S. 296 (1932); *N. J. R. R. 1:10-2.* Notwithstanding this, the Respondent will pass this procedural issue and

proceed directly to the merits of the questions presented on this petition.

The primary thrust of the argument advanced by the Petitioner is the unconstitutionality of *L. 1945, c. 169, p. 595, §15, N. J. S. A. 18:25-16;* of the New Jersey *Law Against Discrimination,* which dispenses with the application of the strict rules of evidence in administrative hearings conducted in accordance with its provisions. He complains that he cannot be required to exhaust the administrative remedies provided for thereunder inasmuch as a strict application of evidentiary rules is required by the due process clause of the Fourteenth Amendment to the Federal Constitution. He asserts, in effect, that the courts of the State of New Jersey cannot constitutionally require him by their decisions to proceed to an administrative hearing prior to obtaining a judicial determination of his grievances, and that their decisions, to the extent that they require an exhaustion of administrative remedies, are ineffectual.

At the outset, the Respondent invites the Court's attention to the fact that the New Jersey courts have judicially determined the Petitioner's case on the merits, albeit adversely to him, without requiring him to first present his complaints before the administrative body set up for that purpose by the statute. Both the Law and Appellate Divisions of the Superior Court have determined that as a matter of state law, the facts alleged in the verified complaint failed to assert a violation of the act upon which the complaint was based (P45-47a(1)), and therefore there was no basis to grant the relief sought. Petitioner apparently fails to recognize this and seeks, in effect, a reversal by this Court of the decisions of the New Jersey courts which construed and applied local law.

The sections of the *Law Against Discrimination* applicable hereto are found in *N. J. S. A. 18:25-12(a)* and *(d)* and *N. J. S. A. 18:25-16*. The former section, subsection (a), states that it is an unlawful employment practice for an employer "... because of the *race, creed, color, national origin, ancestry* or *age* of any individual, or *because of the liability for service in the Armed Forces of the United States*, of any individual ... to discriminate against such individual in compensation or in terms, conditions or privileges of employment"; subsection (d) makes it unlawful for an employer to "discharge, expel or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this act, or because he has filed a complaint, testified, or assisted in any proceeding under this act." *N. J. S. A. 18:25-16*, after providing for a hearing on the complaint of an aggrieved person before the New Jersey Commissioner of Education, and for his appearance thereat at the discretion of the Commissioner, further provides that the Commissioner, during the course of any hearing held on a complaint of violation of the Act, "shall not be bound by the strict rules of evidence prevailing in courts of law or equity". This section of the statute is that which Petitioner presently attacks as being an unconstitutional infringement of his rights under the due process clause of the Fourteenth Amendment.

Rule 19 of the procedural rules of this Court provides that:

> "(1) A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

* * *

Considering first the due process question presented above, and without regard to the extent upon which the New Jersey courts' decisions were based upon state law, it is respectfully submitted that the Petitioner presents nothing of "substance" not heretofore passed upon by this Court, and that those portions of the lower courts' opinions which inferentially upheld the constitutionality of *N. J. S. A. 18:25-16* were clearly decided in accordance with well settled principles.

This Court has long recognized that due process, guaranteed to the citizens of the several states under the Fourteenth Amendment, does not guarantee such citizens any particular form or method of procedure before state administrative agencies. The concept of due process requires that an administrative body, performing a quasi-judicial function, shall observe the rudimentary requirements of fair play, and accordingly, must conduct its activities in such a manner so as to conform to the traditional safeguards against arbitrary action. *Morgan* v. *United States*, 304 U. S. 1 (1937).

In *Barsky* v. *Board of Regents*, 347 U. S. 442 (1954) the Court rejected an attack upon the constitutionality of the New York Education Law, which, having secured to the accused notice, the opportunity to be heard, cross-examine and introduce evidence, contained the provision that in hearings conducted thereunder the hearing agency "shall not be bound by the laws of evidence in the conduct of its proceedings". These provisions of the New York statute

were held to be patently "well within the degree of reasonableness required to constitute due process of law," under the Fourteenth Amendment. Similarly, and with respect to the extent of due process required by the Fifth Amendment, *U. S. Const., amend. V*, the Court long ago settled the question that technical application of the rules of evidence is not required in hearings before federal administrative bodies. *Crowell* v. *Benson*, 285 U. S. 22 (1932); *Opp Cotton Mills, Inc.* v. *Administrator, etc.*, 312 U. S. 126 (1941); *Trade Commission* v. *Cement Institute*, 333 U. S. 683 (1948).

In addition to all of the foregoing, it would seem that the question presented here, i. e., the unconstitutionality of requiring the Petitioner to first proceed to a hearing before the appropriate state agency, has been rendered moot by reason of the state courts' judicial determination that he has no grievance upon which that agency could act. Essentially, what Petitioner asks this Court for is a determination that the decisions below are erroneous and should be reversed in favor of his concept of what the law of the State of New Jersey should be. The construction of the New Jersey *Law Against Discrimination* by the courts of that state, and their judgments based upon examination of the facts presented by the complaint in the light of that construction, is controlling here and the decision below is not subject to reversal. *Scripto* v. *Carson*, 362 U. S. 207 (1960).

B.

The Court lacks jurisdiction to review the judgment below since it was based upon independent non-federal grounds which, standing alone, were adequate to sustain its entry.

Respondent submits that the judgment below was based upon adequate state grounds and that this fact is immediately evident from a reading of the record (P45-47a(1)). The Court's attention is invited to the fact that the complaint was dismissed for failure to allege a breach of contract and on the further ground that the acts alleged to have been committed by the Respondent were not forbidden by the *Law Against Discrimination*. If any support is needed to substantiate the correctness of the Appellate Division's determination one need only to look to the Petitioner's brief filed in the Supreme Court of New Jersey in support of his application for certification (which brief has been submitted as part of the record) wherein he unequivocally stated:

> "Admittedly, there is no means for this plaintiff to prove the defendant's motive for their hiring policy . . . ." (p. 4).

He has likewise admitted the insufficiency of his complaint as a matter of state law in the very petition submitted here (Pet.-9, 10).

From the time of its foundation, this Court has adhered to the principle that it will not review judgments of state courts that rest upon adequate and independent state grounds.

> "It is our purpose scrupulously to observe the long standing rule that we will not review a judgment of a state court that rests on an adequate and inde-

> pendent ground in state law. Nor will we review one until the fact that it does not do so appears of record." *Herb* v. *Pitcairn*, 324 U. S. 117 (1945), at 128.

Here, since it is obvious from the record that the decision below rested upon state law adequate to support the judgment entered independently of any federal grounds, this Court is without jurisdiction to decide the merits of this petition. *Edelman* v. *California*, 344 U. S. 357 (1953).

C.

Petitioner's failure to assert a violation of the Thirteenth Amendment below precludes him from urging the issue on this petition.

The fifth theory urged by the Petitioner in support of the issuance of a writ of certiorari is that he was required to work for the Respondent against his will in violation of the Thirteenth Amendment to the United States Constitution. *U. S. Const. amend XIII §1*, (Pet.-3, 4). This contention admittedly is raised for the first time on this petition (Pet.-3).

Aside from what the Respondent considers to be a lack of merit in this contention, it submits that failure to raise the question below precludes argument and consideration thereof here.

Respondent recognizes that no particular words are necessary in order to assert a federal question, but it is also aware of the rule that "there must be something in the case before the state court which at least would call its attention to the Federal question as one that was relied upon" by a party. *Dewey* v. *Des Moines*, 173 U. S. 193 (1899).

The Petitioner has assigned *28 U. S. C. 1257(3)* as the basis for the Court's jurisdiction. This statute provides for review by writ of certiorari of final judgments of state

courts where "any title, right, privilege or immunity is specially set up or claimed under the Constitution." A review of the record below discloses that neither the complaint nor any of the pleadings filed in this case below ever intimated or suggested a plea of violation of the Thirteenth Amendment. A claim or right which has never been asserted cannot be said to have been denied by a judgment which does not refer to it. *Hamilton Company* v. *Massachusetts*, 73 U. S. (6 Wall.) 632 (1867), and such claim, if never raised or alluded to below, cannot be said to have been decided adversely to a party asserting it here for the first time. *Dewey* v. *Des Moines, supra.* Thus, where, as here, a constitutional issue is presented for the first time not connected with or an enlargement of a federal question actually presented in the state court, the matter is not the subject of argument or consideration on review by this Court. *Wilson* v. *Cook*, 327 U. S. 474 (1946); *Dewey* v. *Des Moines, supra*; *Edward Hines Trustees* v. *Martin*, 268 U. S. 458 (1925).

D.

Petitioner's allegation that the Respondent violated the Thirteenth Amendment does not present a substantial federal question.

Apart from the matters set forth in the foregoing subsection "C", it is respectfully submitted that the Petitioner has nowhere set out any violation by the Respondent of the Thirteenth Amendment to the United States Constitution. The involuntary servitude denounced by that Amendment means a condition of enforced compulsory service of one to another; in essence, it is the involuntary subjection of an individual to a master. *Hodges* v. *United States*, 203 U. S. 1 (1906). Clearly the record itself negates the existence in this case of any such concept.

In the complaint which he filed in the trial court the Petitioner asserted not only a hiring for an agreed wage (P1a), but also his dismissal from this employment. This dismissal he has termed "unlawful" (P4a(1)) and it is because of it that he has sought damages. Furthermore, the pleading itself clearly discloses the actual relationship between the parties when it was asserted that the petitioner was advised by the Respondent's agent that he, the Petitioner, would have to abide by the terms of the hiring arrangement and work "without complaining, if [he] cared to remain with the company" (P1a, 2a(1)). These allegations, it is submitted, are completely incompatible with the idea of an involuntary servitude. The very fact of the institution of this action for damages for an alleged wrongful dismissal makes it clear beyond argument that the Petitioner's continued employment with the Respondent was a voluntary expression of his own desires and that his assertion of a servitude is without foundation.

Conclusion.

For the reasons hereinbefore set forth, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN J. MONIGAN, JR.,
Counsel for Respondent Dravo Chemical Corporation.

JAMES T. CLARE,
of the New Jersey Bar,
On the Brief.

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IN THE

Supreme Court of the United States

October Term, 1963

No. 513

RAYMOND D. BROWN,
Petitioner,

against

DREW CHEMICAL CORPORATION
(formerly E. F. Drew & Co., Inc.),
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Raymond D. Brown,
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Boonton, New Jersey.

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Pursuant to Rules 24(4), 40(4) and 41(3) which govern the procedure for reply briefs filed in this Court, the following reply has been compiled with reference to excerpts from the respondent's brief in opposition to the petition for writ of certiorari served upon the petitioner on October 24, 1963.

POINT I

The respondent pleads:

> "... the petitioner herein originally commenced his action ... to recover damages in the nature of unpaid wages which he claimed were due to him from his employer ... from April 13, 1955, the date of his hiring ..." (Rb 4, par. 2)

> "... notwithstanding the fact that in the complaint itself the petitioner's entitlement to the increment was asserted merely 'as a matter of principle' ..." (Rb 5, par. 1).

C. " * * * the record below is devoid of the suggestion now made by the petitioner that he was required under the 'threat of dismissal' to work for the respondent. This allegation is here raised for the first time * * * " (Rb 5, par. 2).

Petitioner's Reply

Part (4) of the support for the arrearages before dismissal indicates that no wages were lost prior to April 13, 1956 since three raises were received after April 13, 1955, the date of hiring. See R- App. to Pet. pp. 5a-32a. Furthermore, the complaint clearly states that the petitioner was entitled to the higher pay *as a matter of right*, not principle. See R- App. to Pet. pp. 1a-32a. And that he was required to work for the respondent under the threat of dismissal. See R- App. to Pet. pp. 1a-2a, 36-1.

POINT II

The respondent pleads:

A. " * * * the New Jersey courts have judicially determined the petitioner's case on the merits * * * without first requiring him to first present his complaints before the administrative body set up for that purpose by the statute * * * " (Rb 8, par. 2).

B. " * * * the construction of the New Jersey Law Against Discrimination by the courts of that state * * * is controlling here and the decision below is not subject to reversal * * * " (Rb 11, par. 2).

Petitioner's Reply

From the first excerpt it is apparent that the respondent has attempted to exploit the fact that the New Jersey courts docketed the complaint and passed judgment upon the case without first requiring a hearing before the Commissioner of the State Board of Education, and thus

rendered due process of law. However, this merely concerns how the action was handled below, and has no bearing upon whether or not an administrative hearing should afford due process of law, which was the substance of the dispute.

Secondly, it is clearly evident that had the State courts properly decided the issue from the viewpoint of the construction of the Law Against Discrimination, they should have observed that *the law also provided for independent action*, see N. J. S. A. 18:25-27, which along with the argument that the administrative remedy does not guarantee due process of law, forms the basis of the petitioner's defense against the respondent's jurisdictional theory. And considering that the arrearages constitute back pay, under the due process provisions of the State and Federal Constitutions no citizen may arbitrarily be deprived of his property, *Sorensen* v. *Jacobsen* (1951) 232 P. 2d 332, 125 Mont. 148, 26 A. L. R. 2d 1186, which is possible in a quasi-judicial hearing where the application of the rules of evidence is dispensed with.

Furthermore, it should be construed by this Court that since the primary aim of the Law Against Discrimination, N. J. S. A. 18:25-1, *et seq.*, is "An act to protect all persons in their civil rights (and) to prevent and eliminate practices of discrimination against certain persons * * * ", that proving the defendant's motive for an act of discrimination—*especially where no motive was ever claimed*—and proving that the act was done, are essentially two different matters where only the claim made need be proved. From the foregoing, it may be clearly ascertained that the judgment below did not rest upon adequate state grounds, and that this Court has the jurisdiction to review the matter.

POINT III

The respondent pleads:

> A. " * * * a review of the record below discloses that neither the complaint nor any of the pleadings filed in this case below ever intimidated or suggested a plea of violation of the Thirteenth Amendment * * * * " (Rb 14, par. 1).
>
> B. " * * * the petitioner's continued employment with the respondent was a voluntary expression of his own desires and that his assertion of a servitude is without foundation * * * " (Rb 15, par. 1).

Petitioner's Reply

It is stated in the complaint that the respondent's agent, *i.e.* the personnel manager, required that the petitioner work without complaining or face dismissal from the company. See App. to Pet. 1a-2a, 36-1. Although at that stage no plea of involuntary servitude was made, the fact that the pleading does not refer in terms to a federal statute determining the defendant's liability is not controlling as to whether a federal question exists * * *, *Jones National Bank* v. *Yates* (Neb. 1916), 36 S. Ct. 429, 240 U. S. 541, 60 L. Ed. 788. Therefore since the constitutional issue of involuntary servitude has been strongly suggested throughout the action below it should be considered for review on this petition.

With reference to excerpt "B." above, the petitioner replies that the fact he complained of a wrongful dismissal under the statute is not controlling to indicate that he was satisfied with the status quo while in the respondent's service. Furthermore, the reason for the petitioner's continued service, despite the fact that he was working against his will, is explained by the common economic problem created by the necessity to be gainfully employed regardless of any discrepancy in wages. Although it may be stated that the petitioner was able to seek other employment, this would not have solved the problem for which the only solution is to win a decision from this Court.

CONCLUSION

For the reasons hereinbefore set forth in rebuttal of the Respondent's Brief in Opposition, this Court should exercise its discretion and certify the Petition for having presented a substantial federal question.

Respectfully submitted,

RAYMOND D. BROWN,
Petitioner, Pro Se.

Dated: November 7, 1963